IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 776 OF 2004
IN
SUIT NO. 1530 OF 1997

1. M/s. L.D. Enterprises & 2 ors.] .. Appellants (Ori.Defdts.)

Versus

Saremal Pratap Chandji (HUF)] .. Respondent (Ori.Pltff.)

Mr. J.L. Daga i/b M/s. J.L. & Daga & Co. for the appellants.

Mr. S.K. Jain with Mr. M.D. Mali i/b Mr. S.K. Jain for the respondent.

CORAM: R.M. LODHA &
ANOOP V. MOHTA, JJ.

DATED: 17TH FEBRUARY, 2006

P.C. :

. We heard Mr. J.L. Daga, the learned counsel for the appellants and Mr. S.K. Jain, the learned counsel for the respondent.

2. The learned trial Judge passed the decree in the sum of Rs.70,990/- alongwith interest at the rate of 18% p.a. on the said amount against the appellants. Hence the Appeal.

3. The respondent is the plaintiff and the appellants are the defendants and we shall refer to the parties as plaintiff and defendants hereinafter.

4. The plaintiff and defendants No.2 and 3 were the Partners of the defendant No.1-firm. The plaintiff claims to have retired from the partnership with effect from 1st April, 1989. According to him, a sum of Rs.70,016/- was his share of the profit and that remained to be unpaid by the defendants. The plaintiff's case is that the defendants agreed to pay the said amount alongwith interest at the rate of 18% p.a.. The plaintiff specifically averred in the Plaint that as mutually agreed, the defendants used to credit the account of the plaintiff with interest at 18% p.a. at the end of the accounting year and the defendants used to struck total amount and carry forward the amount in the new accounting year as principal credit deposit. It is plaintiff's case that defendants, as part payment, paid a sum of Rs.10,000/- by cheque dated 9th April 1994 drawn on Bank of Maharashtra, Zaveri Bazar Branch. The suit was filed on 9th April, 1997.

5. Despite service of the Writ of Summons, no Written Statement was filed by the defendants for more than seven years. The suit was posted before the trial

Judge, "For Exparte". It appears that on that day, the application was made by the defendants to take the Written Statement on record, but the prayer was declined. The learned trial Judge took on record, the Affidavit of the plaintiff in lieu of examination-in-chief and the plaintiff was cross-examined by the Advocate for the defendants. After hearing the parties, the learned trial Judge by the judgment and decree dated 21st July, 2004, decreed plaintiff’s suit.

6. Twofold contention was raised by the learned counsel for the appellants before us. First, he contended that the learned trial Judge ought to have taken the Written Statement that was tendered on that day on record. Second, the learned counsel for the appellants contended that the suit was barred by limitation and, therefore, liable to be dismissed.

7. The learned counsel for the appellants relied upon the judgment of the Supreme Court in the **case of Ramesh Chand Ardawatiya Vs. Anil Panjwani (2003) 7, S.C.C., 350** in support of his contention that the Court has discretion to permit filing of the belated Written Statement and that even in a case where the Written Statement is not filed, the Court cannot admit

inadmissible evidence or permit the decision to be influenced by irrelevant or inadmissible evidence.

8. None of the contentions appeals us.

9. It is true that in exceptional cases, the Court can accept the Written Statement belatedly, but then it is for the defendants to make out a case for that. There is nothing on record to indicate that any explanation was put forth by the defendants in filing the Written Statement belatedly. It is not that the discretion in accepting the Written Statement belatedly is exercised as a matter of course. We find no justification in the conduct of the defendants in not filing the Written Statement for more than seven years. In the circumstances, the discretion exercised by the learned trial Judge in rejecting the application to take the Written Statement on record does not suffer from any infirmity.

10. As regards the second contention of the learned counsel for the appellant that the suit is barred by time, the learned trial Judge considered the suit being within time on the ground that plaintiff has established the case that as mutually agreed the defendants credited the amount due to the plaintiff with

interest at the rate of 18% p.a. at the end of each accounting year and in that view of the matter, there was no question of the plaintiff's claim being barred by limitation. Though the learned counsel for the defendants submitted that there is no pleading to that effect, upon scan of the Plaint, we find that in paragraph 2, the plaintiff has specifically averred that as mutually agreed the defendant used to credit the account of the plaintiff with interest at the rate of 18% p.a. at the end of every accounting year and the defendants used to struck total amount and carry forward the amount in the new accounting year as principal credit deposit amount. In his examination-in-chief (by way of Affidavit), the plaintiff stated the same thing. Though plaintiff was cross-examined by the defendants, we find there is no cross-examination on this aspect. Thus, the finding of the learned trial Judge that the plaintiff has established the case that as mutually agreed, the defendants credited the amount due to the plaintiff with interest at 18% p.a. at the end of every accounting year, cannot be said to be without pleading or proof. The suit has rightly been held to be within limitation by the learned trial Judge.

11. We find no merit in the Appeal. Appeal is dismissed.

Sd/-
[R.M. LODHA, J.]

Sd/-
[ANOOP V. MOHTA, J.]